P.R. No. 1341/06
Presented by Shri Gayesh P. Gupta
Dated 26/5/06

Single Bench

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IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)
SECOND APPEAL NO. 209 OF 2006

APPELLANT / DEFANDENT : Smt. Dhhudhsi Wife of Shri Ramu Uraon, D/o Late Shri Soma, aged about 27 years, Resident of Village Civildag, Tahsil Samri, District Surguja (C.G.)

VERSUS

RESPONDENTS / PLAINTIFF

1. Phausi Wife of Shri Bhithal D/o Late Shri Phagua, aged about 50 year, Resident of Village Civildag, Tahsil Samri, District Surguja (C.G.)

2. State of Chhattisgarh, Throuth : The Collector, Surguja Ambikapur (C.G.)

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MEMO OF SECOND APPEAL UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE, 1908

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक

मामला क्रमांक ...S.A-209/06... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

30.08.2006

Shri Akhil Agrawal, Advocate appears on behalf of Shri G.P. Gupta, Counsel for the appellant.

Arguments on admission heard.

Order dictated as follows:

ORAL ORDER
30.08.2006

This is the defendant's Second Appeal filed under Section 100 of the Code of Civil Procedure. This appeal arises out of judgment and decree dated 13.02.2006 passed by the Third Additional District Judge (FTC), Ambikapur, District – Sarguja (C.G.) in Civil Appeal No.1-A/2005 arising out of judgment and decree dated 21.11.2003 passed in Civil Suit No.34-A/2000 by the First Additional Civil Judge, Class-I, Ambikpur, District – Sarguja (C.G.).

The plaintiff, respondent No.1 herein, filed a suit for declaration of title and also for permanent injunction in relation to the suit lands described in Schedule – A & B of the plaint. The plaint allegations are that the suit lands were the self acquired property of late Fagua Uraon, who died 8 years prior to the date of institution of the suit. He was succeeded by his wife namely Fagni, the original plaintiff No.1 and Phausi, daughter, original plaintiff No.2. It is also pleaded in the plaint that Fagua Uraon was having a son

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namely Soma, who died in the lifetime of his father about 28 years ago. Soma was having one son namely Sube, who died at the age of 7 years and his wife namely Sita left the house of Soma and she re-married with one Gutri @ Meena and was living with him. It is specifically pleaded that out of the wedlock of Gutri @ Meena and Sita, birth of defendant No.1, appellant herein, took place. It was very specifically pleaded by the plaintiff that name of the father of defendant No.1 is Gutri @ Meena and in this manner, defendant No.1 is not at all related with the family of Fagua. The plaintiff No.1 died during the pendency of the suit and her name was deleted. In this manner, the plaintiff No 2, the respondent No.1 herein, prayed for the above relief in the suit.

The defendant, appellant herein, filed her written statement denying the contentions of the plaintiff. It was pleaded by her that she was the daughter born out of the wedlock of Soma and Sita and she was having interest in the suit properties.

The learned trial Court framed various issues in this case and thereafter, decreed the suit of the plaintiff holding that she is the owner of the suit properties. Along with the aforesaid declaration, a decree for possession and permanent injunction was also passed in favour of the plaintiff.

Against the aforesaid judgment and decree passed by the trial Court, the defendant filed an appeal before the Lower Appellate Court. The Lower Appellate Court confirmed

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the finding regarding paternity of the defendant and it also held that the defendant was not a daughter born out of the wedlock of Soma and Sita. However, it partly modified the decree and granted only the relief of declaration of title and also that the mutation made in the name of defendant was illegal and void along with the cost of the suit and appeal. The decree granted for possession was set aside by the Lower Appellate Court vide para 31 of the judgment that there were no pleadings regarding dispossession etc. neither the suit was valued for possession nor any Court Fees on the relief of possession was affixed and the issues regarding the possession vide issue No.4 was a redundant issue and this issue was neither required to be framed nor any decision on this issue was required for want of pleadings and other formalities.

Learned counsel for the appellant argues that the finding in relation to paternity of the appellant is not in accordance with law. He submits that the trial Court as well as the First Appellate Court erred in law in holding that the appellant was not the daughter of Soma.

I have heard learned counsel for the appellant at length and have also gone through the records of the two Courts below.

Both the Courts after discussing the evidence led by the parties have recorded a finding that in fact, the defendant was not the daughter born out of the wedlock of Soma and

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Sita and was having no right or interest in the property of Fagua Uraon. There appears to be no perversity in the aforesaid finding of fact recorded by the two Courts below.

Since this finding of fact is concurrently recorded by the two Courts below and there appears to be no perversity in the same, I am of the opinion that this appeal does not involve any substantial question of law for interference under Section 100 of the Code of Civil Procedure.

The appeal has no merit and the same is dismissed at the motion stage itself.

Sd/-
Sunil Kumar Sinha
Judge

(पीछे देखिये)